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December 6, 2011

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, MB Docket No. 11-93**

Dear Ms. Dortch:

Today, Will Johnson and I met with Dave Grimaldi, Legal Advisor to Commissioner Clyburn, and, on December 5, 2011, we met separately with Joshua Cinelli, Legal Advisor to Commissioner Copps, and Erin McGrath, Acting Legal Advisor to Commissioner McDowell, to discuss implementation of the CALM Act.

We expressed concern over the FCC's proposal to hold multichannel video programming distributors (MVPDs) liable for a programmer's failure to comply with the A/85 Recommended Practice. Holding MVPDs liable for something beyond their control—commercial loudness levels set by programmers — goes beyond the scope of A/85, and hence beyond the reach of the statute. In particular, if an MVPD performs tests on networks for which the Commission has received a pattern of complaints and notifies the Commission and the network of any problems that it discovers, the MVPD has done all it reasonably can to comply with the A/85 Recommended Practice and should not be held liable if commercials inserted by programmers still do not conform to the Recommended Practice.

We also discussed the FCC's proposal to make promotions and political advertisements subject to loudness regulations. This proposal would add to the costs and burdens of complying with commercial loudness regulations, even though the record reflects no problem with respect to promotions and political advertisements to justify such costs.

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Sincerely,

A handwritten signature in black ink, appearing to read "Marlene H. Dortch". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping underline.

cc: William Lake